

Memorandum Of Understanding

Among
U.S. Coast Guard District 1 (USCGD1)
and
U.S. Coast Guard District 5 (USCGD5)
and
U.S. Environmental Protection Agency Region II (EPA)
and
U.S. Department of the Interior (DOI)
and
U.S. Department of Commerce /
National Oceanic and Atmospheric Administration (DOC/NOAA)
and
State of New Jersey Department of Environmental Protection (NJ DEP)
and
New York State Department of Environmental Conservation (NYS DEC)

PURPOSE

This Memorandum of Understanding (MOU) is designed to implement sections of Subpart J of the National Oil and Hazardous Substances Contingency Plan (NCP) and the requirements of 33 CFR 1321 (j) (4) (C) (v), the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act (OPA) of 1990. This MOU provides pre-authorization for use of in-situ burning by the USCG Federal On-Scene Coordinator (OSC) in response to coastal oil discharges within the jurisdiction of the Region II Regional Response Team (RRT).

This MOU will be incorporated into Subpart J of the Regional Contingency Plan (RCP).

AUTHORITY

Subpart J of the NCP specifies that RRT's shall address, as part of their planning activities, the desirability of using appropriate burning agents, and that Regional Contingency Plans shall, as appropriate, include applicable pre-authorization plans and address the specific contexts in which such products should and should not be used.

Subpart J also provides that the OSC, with the concurrence of the EPA representative to the RRT, and the States with jurisdiction over the navigable waters threatened by the oil discharge, and in consultation with the DOC and DOI natural resource trustees, may authorize the use of burning agents on a case-by-case basis.

Commandant, United States Coast Guard, has pre-designated the USCG Captains Of The Port (COTPs) as the OSCs for coastal oil discharges (as defined in 33 CFR Part 3 and subject to joint response boundary agreements with EPA), and has delegated to the COTP the authority and responsibility for compliance with the FWPCA and its amendments.

The Governor of the State of New Jersey has designated the Commissioner of the Department of Environmental Protection (NJ DEP) the authority and responsibility to approve for the use of in-situ burning for the control of oil spills.

The Governor of the State of New York has designated the Commissioner of the Department of Environmental Conservation (NYS DEC) the authority and responsibility to approve for the use of in-situ burning for the control of oil spills.

The DOI and DOC/NOAA are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding the determination to burn oil in-situ in United States waters.

This MOU constitutes pre-concurrence for USCG, EPA, NYS DEC, NJ DEP, DOC/NOAA, and DOI for the use of in-situ burning in the pre-approved area ("A" zone), and in the conditionally pre-approved area ("B" zone) when wind conditions are favorable.

SCOPE

The USCG, EPA, DOI, DOC/NOAA and the states of New Jersey and New York agree that the primary method of controlling discharged oil shall be the physical removal of the oil from the environment. These agencies recognize that in certain circumstances timely effective physical containment, collection, and removal of the oil may not be possible, and that the utilization of in-situ burning, alone or in conjunction with mechanical removal methods and/or chemical countermeasures, may be considered as a means to minimize substantial threat to public health or welfare, or minimize serious environmental damages.

This MOU establishes the pre-authorized plans for in-situ burning to be used by the OSC in certain waters under the jurisdiction of RRT II. These waters include the Areas of Responsibility (AORs) for the COTPs for Long Island Sound (COTP-LIS), New York (ACT-NY), and Philadelphia (COTP-PHIL). The geographic areas and conditions are as follows (see Figure 1):

1) "A" Zones - Pre-authorization for Open-Water Burning

Geographic Scope:

Zone "A" is defined as waters under the jurisdiction of RRT II and not classified as "B", "C", or "E" zones, that lie 6 nautical miles (nm) and seaward of the Territorial Sea Baseline (as defined in 33 CFR 2.05-10) along the coast of New Jersey (north of the demarcation between Federal Region II and Region III) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 degrees True to the outermost extent of the Exclusive Economic Zone (EEZ).

Advance Approval for Zone "A":

Within Zone "A", the decision to use in-situ burning rests solely with the OSC. No further concurrence or consultation on the part of the OSC is required with EPA, DOC/NOAA, DOI, or the states of New York or New Jersey. However, if threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations.

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to conduct burning within the "A" zone via each

agency's respective RRT representative.

2) "B" Zones - Pre-authorization with Favorable Wind Conditions

Geographic Scope:

Zone "B" is defined as waters under the jurisdiction of RRT II and not classified as "A", "C", or "E" zones, that lie between 3 nm and 6 nm from the Territorial Sea Baseline along the coast of New Jersey (north of the demarcation between Federal Region II and Region III) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 degrees True.

Advance Approval for Zone "B":

Within Zone "B", the decision to use in-situ burning rests solely with the OSC if and only if the prevailing wind direction is decidedly seaward and is expected to remain in the seaward direction throughout the duration of the planned in-situ burning operations. If this is the case, no further concurrence or consultation on the part of the OSC is required with EPA, DOC/NOAA, DOI, or the states of New York or New Jersey. If the prevailing wind direction is not decidedly seaward, the OSC is required to follow standard consultation and concurrence procedures. In either case, if threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations (see Figure 2).

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to conduct burning within the "B" zone via RRT representatives.

3) "C" Zones - Waters Requiring Case-by-Case Approval

Geographic Scope:

Zone "C" is defined as waters under the jurisdiction of RRT II and not classified as "A", "B", or "E" zones, that 1) lie within state territorial boundaries, 2) are designated as marine reserves, National Marine Sanctuaries, National or State Wildlife Refuges, units of the National Park Service, or proposed or designated Critical Habitats, or 3) are considered coastal wetlands, including submerged algal beds and submerged seagrass beds.

If the OSC feels that in-situ burning within the "C" zone would be beneficial, a request for authorization must be submitted to EPA, USCG, DOC/NOAA, DOI, and the states of New York and/or New Jersey, along with the information specified in the checklist in Appendix II. The OSC is granted authority to conduct in-situ burning in "C" zones only after consultation with DOC/NOAA and DOI, and only after concurrence is given by EPA and the affected states. The EPA, USCG, DOC/NOAA, DOI and the affected state(s) will respond to the OSC's request for burning in Zone "C" within four hours of receipt of the information specified in the checklist in Appendix II.

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to initiate an approved burn within the "C" zone via each agency's respective RRT representatives.

4) "E" Zones - Exclusion Zones

Geographic Scope:

An "E" zone is defined as an area under the jurisdiction of RRT II and not classified as an "A", "B", or "C" zone, that has been designated by the USCG, EPA, DOC/NOAA, DOI and the states of New York and New Jersey, or the Area Committees as an exclusion zone. These areas will be identified and listed in the appropriate Area Contingency Plans and as attachments to this MOU in the Regional Contingency Plan.

No in-situ burning operations will be conducted in an "E" zone unless 1) in-situ burning is necessary to prevent a clear, immediate, and extreme risk to human health or safety, or 2) an emergency modification of this agreement is made on an incident-specific basis.

PROTOCOLS

As attested by the signatures set forth at the end of this document, the USCG, EPA, DOI, DOC/NOAA, NJ DEP , and NYS DEC agree that the predesignated OSC has the authority and may order the use of in-situ burning on oil discharges using the guidelines found in Subpart J and Appendix M of the Region II RCP and Annex G of the COTP-LIS, ACT-NY, and COTP-PHIL Area Contingency Plans (ACPs) subject to the following conditions:

1. The decision to use in-situ burning on a discharge of oil in accordance with this Agreement rests solely with the pre-designated OSC. This responsibility may not be delegated.
2. The OSC may authorize the use of in-situ burning on a discharge of oil to prevent or substantially reduce the hazard to human life without obtaining concurrence from EPA or the affected states, without following protocols established in this MOU, and without following the guidelines in the RCP and ACPs. If in-situ burning is used in this manner, notification of EPA, USCG, DOC/NOAA, DOI and the affected state(s) shall be made as soon as practicable. Once the risk to human life has subsided, these exceptions no longer apply.

The following protocols assume that risk to human life is not a factor:

3. Prior to any in-situ burn operations, the OSC will review the decision diagram contained in Appendix I.
4. The USCG agrees with EPA, DOI, DOC/NOAA, and the states that if a decision has been made to use in-situ burning under the provisions of this agreement, the OSC will immediately notify EPA, DOI, DOC/NOAA and the states of that decision. This initial notification will include, but is not limited to, the following information to the extent available:

Type and amount of oil discharged

Area affected

The projected area of impact of the oil if not burned

Reasons why in-situ burning has been selected as a mitigation technique

On-scene weather

5. The checklist form in Appendix II shall be completed for all burns and provided to EPA, USCG, DOC/NOAA, DOI, and the affected state(s) in a timely manner for documentation and informational purposes. If the Responsible Party (RP) requests the use of in-situ burning, members of this organization will be responsible for completing the checklist in Appendix II. If the RP is unknown and the request to burn is made by another party, the OSC will be responsible for completing this checklist.

6. Burning will be conducted by trained professionals using recognized techniques and technology. Burning will be conducted in a way that allows for safe and effective control of the burn to the maximum extent feasible, including the ability to rapidly stop the burn if necessary. Containment and control using fire-resistant boom is recognized as the preferred method of burning. All practical efforts to limit the potential for igniting the source or adjacent, uncontained, or uncontrollable slicks will be made.

7. In-situ burning is advised only when the meteorological and sea conditions are operationally favorable for a successful burn. The OSC will give due consideration to the direction of the wind and the possibility of the wind blowing precipitate over population centers or sensitive resources onshore. A safety margin of 45 degrees of arc on either side of predicted wind vectors should be considered for shifts in wind direction (see Figure 2 for Zone "B" requirements). If conditions change to exceed the safety margins during a burn in Zone B the burn will be extinguished.

8. Health and Safety Concerns -

(a) OPERATORS: Assuring workers' health and safety is the responsibility of employers and the OSC who must comply with all Occupational Health and Safety Administration (OSHA) regulations. Prior to any in-situ burn operations, a site safety plan must be prepared.

(b) PUBLIC: Burning should be stopped if it becomes an unacceptable health risk to the general public. If at any time during burning operations exposure limits are observed to exceed federal air quality standards in nearby populated areas, the OSC will require the operations to be immediately cease. The Level of Concern (LOC) for particulates for the general public in Region II is 150 ug/m³ (PM-10) averaged over one hour. Public advisories may be required prior to initiating a burn.

9. In-situ burning will be conducted in accordance with any consultations approved by the U.S. Fish and Wildlife Service and the NOAA National Marine Fisheries Service under Section 7 of the Endangered Species Act. If threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations. Measures will be taken to prevent risk to any wildlife, especially endangered or threatened species. Examples of potential protection methods may include moving the location of the burn to an area where listed species are not present, temporary employment of hazing techniques, if effective, and physical removal of listed species individuals under the authority of the trustee agency. If the risk to endangered or threatened species cannot be eliminated or reduced sufficiently, the burn will not be conducted unless a threat to human life exists.

10. The OSC will make every reasonable effort to continuously evaluate the decision to burn, and allow RRT agencies and the affected states the opportunity for comment. Cognizant representatives from trustee agencies, the potentially impacted state(s), and EPA, will have the responsibility and authority to decide when a burn should be discontinued. Those cognizant representatives, who should be identified by their respective agencies prior to commencement of a burn, must have the verbal authority to call for the burn to be discontinued, since production of a written request in the midst of an operational burn would most likely be impractical. The reason and justification for their request, however, should be subsequently documented and submitted to the OSC for the record. Requests to discontinue a burn, when submitted by agencies with trustee authority, will be immediate grounds for discontinuance of burn operations.

11. Monitors representing the USCG, EPA, federal trustee agencies, the affected states, OSHA, and the responsible party will have the opportunity to monitor in-situ burning operations, when feasible:

(a) Monitoring to establish "continue / discontinue" data for input to the OSC will be conducted in accordance with protocols outlined in Appendix III. Unless smoke plumes are predicted to cross over populated or environmentally sensitive areas, an inability to conduct monitoring operations will not be automatic grounds for discontinuing or prohibiting in-situ burn operations. Real-time PM-10 monitoring will be initiated when trajectories indicate potential movement toward populated or environmentally sensitive areas, and will be in place prior to the start of burn operations to gather baseline data.

(b) All burns must incorporate constant visual observations to monitor smoke plume behavior. A trial burn may be conducted to better estimate plume behavior prior to operational burning. The OSC, EPA, DOC/NOAA, DOI, and the affected state(s) should determine under what conditions the burn should be stopped if the plume contacts or threatens to contact the ground in populated or environmentally sensitive areas.

12. Mechanical recovery equipment shall be mobilized on-scene when feasible for backup and complimentary response capability. Provisions should be made for collection of burn residue following the burn(s).

13. If in-situ burning is used, a post incident debriefing will take place within 45 days to gather information concerning its effectiveness and to determine whether any changes to this agreement are necessary. The debriefing will be chaired by the OSC by arranging the time, place, and date of the debrief. The results of the debrief will be included in the OSC report.

AMENDMENTS

This Memorandum of Understanding may be amended in writing in whole or in part as is mutually agreeable to all parties thereto.

Area Committees may submit further defined areas for use/non-use of in-situ burning for consideration and approval by the USCG, EPA, DOC/NOAA, DOI and the states of New York and New Jersey. Approved amendments shall be found in Appendix I of this MOU.

CANCELLATION

This Memorandum of Understanding may be canceled in whole or in part by any party thereto. Cancellation will take place 30 days following delivery of written notification to each of the agencies participating in this Memorandum of Understanding.

APPENDICES

- I. OSC ISB Decision Diagram
- II. ISB Evaluation Checklist
- III. ISB Monitoring Protocols

SIGNATURES

Captain Eric J. Williams III, USCG
Division Chief
Marine Safety Division
First Coast Guard District
RRT 2 Co-Chair

Date

Captain Anthony Regalbuto, USCG
Division Chief
Marine Safety Division
Area/Fifth Coast Guard District
RRT 3 Co-Chair

Date

Captain Peter K. Mitchell, USCG
Captain Of The Port Long Island Sound
Federal On-Scene Coordinator

Date

Captain Richard Vlaun, USCG
Captain Of The Port New York
Federal On-Scene Coordinator

Date

Captain John Veentjer, USCG
Captain Of The Port Philadelphia
Federal On-Scene Coordinator

Date

Mr. Bruce Sprague
Response and Prevention Branch
U.S. Environmental Protection Agency, Region II
RRT 2 Co-Chair

Date

Mr. Andrew Raddant
Regional Environmental Officer / Northeast
U.S. Department of Interior
RRT Representative

Date

Cdr. Gerry Wheaton
DOC / NOAA
U.S. Department of Commerce
RRT Representative

Date

Mr. Richard Gimello
Assistant Commissioner, Site Remediation
Emergency Response Coordinator
Department of Environmental Protection
State of New Jersey

Date

Mr. Thomas Quinn
Director, Division of Spills Management
Department of Environmental Conservation
State of New York

Date